IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3154 of 2002

For Approval and Signature:

Hon'ble MR.JUSTICE AKSHAY H.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

BHAGWATI PAPER MILLS

Versus

LAHUDAS POPAT MAHAJAN

Appearance:

1. Special Civil Application No. 3154 of 2002

MR PR NANAVATI for Petitioner No. 1

NOTICE SERVED for Respondent No. 1

CORAM : MR.JUSTICE AKSHAY H.MEHTA

Date of decision: 26/06/2002

ORAL JUDGEMENT

1. Rule. Though respondent is served, no-one appears on behalf of the respondent.

2. By this petition, the petitioner challenges the award made by the Labour Court, Valsad in Reference (L.C.V.) No.2119/1990 dated 1st March, 1999 which has been passed against the petitioner ex-parte and also the

order passed by the said Labour Court below application at Exh.14 being numbered as Misc. application No.10/1999 in the aforesaid reference. The said application has been filed for setting aside the ex-parte award and to hear the reference afresh. The order below application is dated 19th January, 2002. The said application has been rejected only on the ground of delay.

1.1. On 26th March, 2002 this Court (Coram : Ravi R. Tripathi, J.) issued notice to respondent on condition that the petitioner deposits a sum of Rs.10,000/- towards the costs of the respondent who appears in this matter. I am informed by Mr.Nanavaty that the said amount has already been deposited with the office of this Court. It appears from the record that though the respondent is duly served, he has not remained present on earlier occasion. Today also when the matter is called out he is not present. Mr.Nanavaty submits on behalf of the petitioner that the petitioner may be given a fair chance to contest the litigation on its merits and to defend its interest by remanding the matter back to the Labour Court for hearing it afresh. Since the respondent is not present, there is no one to oppose this request of Mr.Nanavaty.

2. Looking to the facts and circumstances, I am of the opinion that it would be in the interest of justice to give the petitioner a fair chance to contest the proceedings. The award dated 1st March, 1999 and the order of the application at Exh.14 dated 19th January, 2002 are quashed and set aside. The entire matter is therefore, remanded back to the Labour Court with a direction to take on file the reference (L.C.V.) No.2119/1990 and to proceed further with the recording of the evidence of the parties. Whatever the evidence that has already come on record from the side of the respondents i.e. Lahudas Popat Mahajan on record of the said reference will remain as it is. However, the present petitioner M/s.Bhagwati Paper Mills will be entitled to cross-examine the persons whose evidence has already come on record but who are not cross-examined by the petitioner. It is also clarified that the respondents will be at liberty to produce further evidence orally as well as documentary, if he so desires. The petitioner is also permitted to lead its evidence at the proceedings. Upon conclusion of the recording of evidence, the Labour Court will render its decision by taking into consideration the entire evidence which has already come on the record and the evidence that may now be brought on record by the parties. This direction is required to be carried out by the Labour Court only upon

the petitioner depositing a sum of Rs.20,000/- before the Labour Court and upon production of adequate proof thereof. The Labour Court is further directed to give this amount to the respondent after proper verification and identification. The petitioner is at liberty to withdraw the amount of Rs.10,000/- which it has deposited before this Court pursuant to order dated 26th March, 2002. As and when the petitioner deposits an amount of Rs.20,000/- the Labour Court may commence the hearing of the proceedings and complete the same as early as possible preferably before 31st December, 2002. This petition is, therefore, allowed with the aforesaid direction with no order as to costs. Rule is made absolute accordingly.

26.6.2002. [Akshay H. Mehta, J.]

/phalguni/